

Keith W. Wendte
Serial No.: 10/759,309
Response to Office Action of January 11, 2006

REMARKS

Claims 1-29 are pending in the present application, of which claims 13-18 and 22 were withdrawn. In the Office Action of January 11, 2006, claims 5-12, 19-21, and 23 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Office Action also rejected claims 1-6, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Robinson, Jr., et al. (U.S. Patent No. 4,423,788) in view of *either* Winterton (U.S. Patent No. 5,341,754) *or* Yoder et al. (U.S. Patent No. 5,724,903). Applicant appreciates the Examiner's indication that claims 7-10 would be allowable if rewritten in independent form. Likewise, Applicant appreciates the Examiner's indication that claims 24-29 have been allowed. Applicant respectfully requests, in consideration of the following, timely issuance of Notice of Allowance.

Specification Corrections

In the specification, paragraphs [0037] and [0049] have been amended to correct minor typographical errors.

Rejections Under 35 U.S.C. § 112

The Office Action rejected claims 5-12, 19-21, and 23 under 35 U.S.C. § 112, second paragraph. Specifically, the Office Action noted that several claim elements lacked proper antecedent basis. As suggested by the Examiner, Applicant has amended the claims to correct typographical errors within the claims that gave rise to the proffered rejections.

Rejections Under 35 U.S.C. § 103

The Office Action rejected claims 1-6, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Robinson, Jr. et al. in view of *either* Winterton *or* Yoder et al. Hence, the Office Action presented two, alternative, rejections.

The Office Action acknowledged, "Claim 1 distinguishes over Robinson in requiring 'a seed trench closing assembly operable to close the seed trench' and 'at least one rear press wheel in mechanical communication with the gauge wheels,' each of which are notoriously conventional features of seed planters." As such, the Office Action cited Winterton or Yoder et al. as teaching that it is "conventional to use at least one rear press or closing wheel in a seed planter mechanical combination." To this end the Office Action cited the pair of spaced

Keith W. Wendte
Serial No.: 10/759,309
Response to Office Action of January 11, 2006

press wheels (23) of Winterton and the pair of spaced closing wheels (32) of Yoder et al. as teaching such because it "insures the uniform covering and firm contact of the dispensed seed in the furrow with the soil." Office Action, 01/09/06, page 5, lines 1-8.

However, the Applicant respectfully submits that Robinson, Jr. et al. discloses gauge wheels that are in mechanical communication with each other to compensate for vertical displacement of the adjacent gauge wheel (i.e., "gauge wheel movement in one direction produces a contrary movement of the other gauge wheel in the other direction to average frame height change when an obstacle is encountered"). Col. 2, lines 4-9. Additionally, Winterton discloses a press wheel (23) that is shown to be hinged to the rear frame component (17). See FIG. 1. Accordingly, upon review of Fig. 1 and the accompanying description, it is clear that this hinge does not provide "mechanical communication with the gauge wheels," as asserted in the Office Action. The press wheel may rotate about the connection point but it does not "communicate with the gauge wheels" because, contrary to the language of amended claim 1, the system of Winterton does not perform such that "a vertical displacement of one of the gauge and the at least one rear press wheel in a first direction produces a biasing force on the other of the gauge and the at least one rear press wheel in a direction opposite the vertical displacement."

In fact, the Office Action did not even address these elements of claim 1. Rather, when addressing the last clause of claim 1 (albeit, prior to amendment), the Office Action simply provided the following:

wherein a vertical displacement of one of the gauge wheels (62, 67) in a first direction produces a biasing force on the other gauge wheel in a direction opposite the vertical displacement.

Not only is such insufficient to establish that the art of record teaches or suggests that which is called for, but it also fails to address the actual language of claim 1, which is quite different than the language cited in the Office Action. That is, even prior to amendment, this element of claim 1 called for:

wherein a vertical displacement of one of the gauge and press wheels in a first direction produces a biasing force on the other of the gauge and press wheel in a direction opposite the vertical displacement.

Keith W. Wendte
Serial No.: 10/759,309
Response to Office Action of January 11, 2006

However, when addressing this portion of claim 1, the Office Action apparently did not consider the highlighted elements because they were omitted in the Office Action. In this regard, beyond the fact that the Office Action did not provide any citation or explanation to establish that the art of record teaches a system capable of this explicitly claimed functionality, the Office Action failed to consider all of the elements included in the claim. Nevertheless, as acknowledged by the Office Action, Robinson, Jr., et al. does not teach or suggest such operation and, as will be shown below, Winterton and Yoder et al. actually teach away from such a configuration and operation.

In particular, Winterton teaches away from that which is called for in claim 1 by disclosing that the "sweeper wheels are divorced from the frame 17 of the planter unit 10 and are supported to float upwardly or downwardly **independently of the gauge wheels 20.**" Therefore, under MPEP §§ 2141.02 and 2143, the proffered rejection cannot be sustained.

Similarly, Yoder et al. discloses a press wheel (seed firming wheel 42) that is spring biased to press upon the soil, but is clear that the gauge wheel and press wheel are not in communication so as to perform such that "a vertical displacement of one of the gauge and the at least one rear press wheels in a first direction produces a biasing force on the other of the gauge and the at least one rear press wheel in a direction opposite the vertical displacement," as called for in claim 1. Rather, Yoder et al. states, "The seed firming wheel support 40 comprises a rearwardly extending forked frame 44, a biasing spring 48 positioned between the forked frame 44 and the C-shaped link 46 for **biasing the C-shaped link downwardly**, and a seed firming wheel 42 rotatively mounted to the C-shaped link 46." Col. 3, lines 6-12. In this regard, FIGS. 2 and 4 show that Yoder et al. does not contemplate mechanical communication between a gauge wheel and a press wheel to yield the claimed operation. Rather, Yoder et al. too teaches away from the present invention and discloses a press wheel pivotally pinned to the frame and independent of the gauge wheels. See col. 2, lines 6-9. Hence, under MPEP §§ 2141.02 and 2143, the rejection cannot be sustained.

For at least these reasons, claim 1 is patentably distinct from the art of record. Accordingly, claims 2-6, 11, and 12 are in condition for allowance at least pursuant to the chain of dependency. That is, while Applicant respectfully disagrees with the Office Action with respect to the art as applied, in light of the fact that claims 2-6, 11, and 12 depend from

Keith W. Wendte
Serial No.: 10/759,309
Response to Office Action of January 11, 2006

what is believed to be an allowable claim, Applicant does not believe additional remarks are necessary.

Accordingly, the application is in condition for allowance and Applicant respectfully requests timely issuance of a Notice of Allowance. As always, the Examiner is invited to contact the Undersigned at the number appearing below if it is believed that such would advance the prosecution of the present application.

Though no fee is believed to be necessary as a result of this communication, the Commissioner is hereby authorized to deduct any fees arising in the present application for Deposit Account No. 17-0055.

Respectfully submitted,

Keith W. Wendte

By: 
Jack M. Cook
Reg. No. 56,098
Attorney for Applicant
QUARLES & BRADY, LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5405